

REMARKS

Applicants thank the Examiner for the very thorough consideration given the present application. Claims 1-6, 8-14, 16 and 18-23 remain in the application and claims 1, 13, 16 and 21 are independent. The Office Action dated February 17, 2010 has been received and carefully reviewed. Each issue raised in the Office Action is addressed below. Reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Examiner Interview

Responsive to receipt of the final Office Action, Applicants representative Paul T. Sewell telephoned Examiner James Keenan to request an Interview. The telephone Interview occurred on May 5, 2010. Applicants and Applicants' representative wish to thank Examiner Keenan for the courtesies extended during the lengthy interview and especially for his willingness to suggest language for both clarifying the claims and avoiding the applied prior art. During the interview we reviewed the features of the invention and the claim construction in detail. We then discussed in detail the features of Peltomaki, Eisele and Ellington and especially the differences over features of the present embodiments. We also discussed in great detail the rejections of the claims for being indefinite and the Examiner's comments on pages 8 and 9 of the Office Action. The Examiner indicated that these comments apply to all of the claims of record, including those claims not rejected for being indefinite and suggested that independent claims 16 and 21 also be considered for adding clarifying language as we discussed for claims 1 and 13.

We are grateful for Examiner Keenan's willingness to suggest improvements and his indications that the proposed changes discussed would appear to sufficiently clarify the claims so as to obviate the rejections for being indefinite and would also appear to obviate the currently applied prior art rejections, pending his further review upon formal filing.

Again, Applicants are grateful for Examiner Keenan's willingness to discuss the rejections at length as well as his suggestions for making progress toward allowable subject matter. Applicants have adopted Examiner Keenan's suggestions and present them herein as agreed. The above constitutes Applicants' statement of the substance of the Interview.

Claim Rejections – 35 U.S.C. § 112, Second Paragraph

Claims 1-6, 8-14, 22 and 23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. This rejection is respectfully traversed.

Applicants appreciate the discussion presented in the Office Action under the rejection on page 2 as well as that provided on pages 8 and 9, and especially those proffered in the above noted Examiner Interview. Responsive thereto, Applicants have revised the claims as agreed in the Interview with a view toward providing a clear description of features of the several embodiments of the invention. It is submitted that the claims now particularly point out and distinctly claim the subject matter that Applicants regard as their invention. Reconsideration and withdrawal of the rejection are respectfully requested. Should the Examiner have any additional suggestions upon careful review of the instant amendment, he is invited to call the undersigned to discuss them.

Legal Standard for Anticipation and Obviousness Rejections

According to MPEP § 2131, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ...claims." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913 (Fed. Cir. 1989).

Similar to anticipation rejections, in order to establish a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In Re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006).

Claim Rejections - 35 U.S.C. § 103

Claims 13 and 21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Peltomaki in view of Eisele. Applicants submit the Examiner has failed to establish a *prima facie* case of obviousness and respectfully traverse the rejection. A complete discussion of the Examiner's

rejection is set forth in the Office Action, and is not being repeated here.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the cited references must teach or suggest each and every element in the claims. See MPEP § 706.02(j) and MPEP §§ 2141-2144.

While not conceding the appropriateness of the Examiner's rejection, but merely to advance prosecution of the instant application, Applicants respectfully submit that independent claim 13 has been amended to recite a combination of elements in an arrangement for running a warehouse including a collecting device, an intermediate store, a gripping device, a plurality of storage units, a portal bridge and a further portal bridge having the features discussed in the above-noted Interview. Applicants respectfully submit that this combination of elements as set forth in independent claim 13 is not disclosed or made obvious by the prior art of record, including Peltomaki and Eisele.

While not conceding the appropriateness of the Examiner's rejection, but merely to advance prosecution of the instant application, Applicants respectfully submit that independent claim 21 has been similarly amended to recite a combination of elements in a method for running a warehouse including the steps of moving a collecting device above the storage area, accommodating a stack part in an intermediate store, filling the intermediate store, and transferring objects between a intermediate store and storage unit mounted on a portal bridge and a further portal bridge. Applicants respectfully submit that this combination of elements as set forth in independent claim 21 is not disclosed or made obvious by the prior art of record, including Peltomaki and Eisele.

As discussed, frame 21 of Peltomaki cannot be interpreted as an intermediate store because it moves in the vertical direction, as described in column 2, lines 14-18, so that the gripping device may be actuated. The Examiner interprets conveyor 14 of Peltomaki as the movable storage unit, but according to Peltomaki, conveyor 14 is merely for unloaded goods, as described in column 4, lines 6-11 and 50-52. In fact, the paragraph at column 4, lines 6-11 indicates that conveyor 14 does not store goods at all, but merely moves them to conveyor 15 as shown in Figure 1. Therefore, conveyor 14 is different both structurally and functionally from the storage unit of the invention. Similarly, contrary to the statement in the Office Action, the converters 9 of Eisele are not storage units, as they are used to transport away either the

uppermost container of a stack or the lowermost container from lifter 8. Thus, neither Peltomaki nor Eisele show or suggest an intermediate store as in the instant invention.

Applicants respectfully submit that this combination of references is improper for a number of additional reasons. First, the base reference to Peltomaki is directed to a warehouse arrangement, which does not have storage units and the collecting device located opposite each other on different portal bridges. Instead, the base reference to Peltomaki merely has robot bridge(s) 5 upon which a vertically movable robot unit 12 is mounted for lifting "one or several boxes 13 from the belt conveyor 11 and moves the boxes to the desired position of the storage area 3", column 3, lines 30-32. In Peltomaki, the robot unit 12 then may move boxes between stacks and then "moves the formed box stack to an unloading area, such as the conveyor 14", column 4, lines 49-52. Claims 13 and 21 require a plurality of storage units arranged fixed in the vertical direction above a storage area on a portal bridge, which can be moved independently of the collecting device, so that the storage units on the portal bridge and the collecting device on another portal bridge are located opposite each other. There is no portal bridge having a plurality of storage units in Peltomaki. Thus, the base reference to Peltomaki is significantly different than what is claimed and, in no way, discloses or suggests the claimed invention. As noted above, the Office Action takes the position that the second conveyor 14 of Peltomaki is considered to be a storage unit. To the contrary, however, the Office Action fails to establish how the second conveyor 14 of Peltomaki, which merely receives boxes for unloading toward conveyor 15, can be considered to show or suggest a plurality of storage units arranged above the storage area, fixed in the vertical direction, fixed on a portal bridge which can be moved independently of the collecting device, and the storage units and the collecting device are located opposite each other and objects accommodated in the intermediate store of the collecting device can be transferred directly into the storage units. None of these features are properly addressed by this prior art. Peltomaki is similarly deficient with respect to the features of claim 21. The secondary reference to Eisele appears to disclose a transfer device for shipping containers wherein there appear to be two transfer devices 8 and 9 for moving selected containers. These transfer devices might appear to have a function similar to that of robot unit 12 of Peltomaki, but clearly do not function as the claimed storage units on a portal bridge. Eisele does not show or suggest storage units arranged a fixed distance or a fixable distance above a storage area and mounted on a portal bridge which can be moved independently of a collecting device moved on a

separate portal bridge for cooperation with each other. Thus, the secondary reference to Eisele neither discloses nor suggests storage units and the collecting device located opposite to each other on different portal bridges, and therefore cannot remedy the defects of Peltomaki discussed above. Applicants respectfully submit that the combination of elements as set forth in independent claims 13 and 21 is not disclosed or made obvious by the prior art of record, including Peltomaki and Eisele, for the reasons explained above. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Peltomaki in view of Eisele, and further in view of Beutler. This rejection is also respectfully traversed. Beutler was cited for a showing of storage unit 16b which is independently movable relative to a gripping unit. To the contrary, Applicants respectfully note that even if 16b is considered to be a storing unit, which we do not admit, such structure in Figure 1A can be seen not to show storage units and the collecting device (such as pod receiver 28) located opposite to each other on different portal bridges so that objects accumulated in the intermediate store of the collecting device (note that there is no intermediate store arranged on a collecting device) can be transferred directly into the storage units. Moreover, the storage units 16a-16c, only one of which is movable, are seen to be for "storage and retrieval of silicon wafers during the semiconductor fabrication process", column 2, lines 13-14, and do not relate to selection and collection for transfer for shipping within a warehouse. The rejection has presented no persuasive basis for any reason that one working in the art of warehouses as shown by Peltomaki would turn to the art of semiconductor manufacturing for the solution to an unstated problem. Therefore Beutler cannot remedy the defects of Peltomaki and Eisele described above.

Claims 1, 3/1-5/1, 6, 8, 10-12, 16, 19 and 22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Peltomaki in view of Ellington. This rejection is also respectfully traversed. Comments made above with respect to Peltomaki are incorporated herein. Ellington was cited for a showing of an intermediate store 65, the Examiner taking the position that magazine 65 may be considered to be an intermediate store at least to some extent because of the ambiguous and inaccurate language in claims 1 and 16. To the contrary, the magazine 65 of Ellington does not appear to be in a fixed location above a storage area during the pick up of objects. The feed in and feed out of the tubs 12 in Ellington is controlled by the ratchet mechanisms shown in Figures 8-17, and can only add or remove one tub at a time. Ellington is not capable of or

suggest an intermediate storage filled by successively lifting one object or a plurality of objects from stacks. Even if one were to attempt to combine Peltomaki and Ellington, which we do not admit is obvious, it would appear that the ratchet mechanisms of Ellington would be necessary to define a store, and the ratchet mechanisms of Ellington are not capable of the function recited in these claims of filling by successively lifting a plurality of objects. Applicants respectfully assert that independent claim 1 has now been amended to recite a collecting device is movable over the storage area of a warehouse and a portal robot for moving the collecting device over the storage area, and an intermediate store on the movable collecting device, the intermediate store arranged in a fixable location above the storage area of the objects to be picked up on the collecting device to accommodate objects to be picked up from the storage area for filling the intermediate store successively from various stacks in separate pick-up steps, whereas the intermediate store is arranged in the fixable location above the storage area as the objects are picked up. Likewise, claim 16 recites steps of a method of operating a warehouse similar to the functions recited in claim 1. Neither Peltomaki nor Ellington, alone or in combination, show or suggest these features. As was discussed above, Peltomaki fails to show an intermediate store on the movable collecting device in a fixable location above the storage area of the objects. To the contrary, the boxes in Peltomaki are continuously shifted up or down within gripping device 20 where there is no intermediate store. Ellington relates to an automatic harvester 10 that can automatically pick up fruit filled picker tubs 12; wherein the tub 12 is lifted, its contents transferred to a hopper from where a conveyor moves the fruit to a larger fruit dump bin 14; the tub is placed back on the ground and the harvester is driven over the empty tub. At the rear end a tub stacker 20 may pick up or add an empty tub to a stack 22 in a magazine 65. In Ellington, if there is an intermediate store, which is not at all clear, it would appear to be the bin 14. This reference combination is not understandable as Ellington is not related to a warehouse conveyor at all. Ellington fails to show or suggest an intermediate store on a movable collecting device, the intermediate store arranged in the fixable location above a storage area of objects to be stored and wherein the objects to be picked up and accommodated from the storage area fill the intermediate store for delivery. Ellington does not relate to running a warehouse, nor does the rejection establish why one of skill in the art of warehouse sorting and collecting would turn to the entirely disparate art of harvesters for solutions to an unnamed problem. Furthermore, the gripping device in Ellington is not formed by two mutually opposing blades, nor does it have a

collecting device movable over the storage area and a portal robot for moving the collecting device over the storage area, an intermediate store arranged in a fixable location above the storage area of the objects to be picked up on the collecting device to accommodate objects to be picked up from the storage area for filling the intermediate store successively from various stacks in separate pick-up steps, and therefore cannot remedy the defects of Peltomaki discussed above. Neither Peltomaki nor Ellington shows an intermediate store on a movable collection device, the intermediate store arranged in a fixable location above the storage area as the objects are picked up. Peltomaki fails to show an intermediate store as defined in these claims. Neither of these references, either singly or in combination, permits the sequential accumulation of objects by a gripping device which can vertically feed any number of objects (of from one to a plurality) into an intermediate store in a fixable location above the gripping device.

Applicants note the arguments of the Office Action, attempting to draw a comparison between Peltomaki and Ellington so as to establish that the art of Ellington is reasonably pertinent to the art of Peltomaki. The Office Action attempts to equate driving a harvester around an orchard with automated selection of boxes from stacked supplies in a warehouse by arguing that the claims are so broad as to create a connection. Applicants submit that the claims have been amended to make clear the invention is directed to structure and method for running or operating a warehouse with a storage area, not for collecting fruit baskets. Applicants further submit the argument fails to establish reasonable pertinence, as it is not at all clear why one working in the art of computer controlled selection of a specific number of boxes from stacks for delivery in a warehouse would have turned to the art of sequentially dumping fruit in an orchid. How are similar problems similarly addressed? Ellington fails to show or suggest the selection of a tub of fruit from a stack of filled tubs and fails to show or suggest picking up the selected filled tub or filled tubs and storing them at a fixable location above the storage area. It would appear that any attempt to stack filled fruit tubs would crush the fruit. Applicants respectfully submit that reasonable pertinence has not been established. Reconsideration and withdrawal of the rejection are respectfully requested.

With regard to dependent claims 3/1-5/1, 6, 8, 10-12, 19 and 22, Applicants submit that claims 3/1-5/1, 6, 8, 10-12, 19 and 22 depend, either directly or indirectly, from independent claims 1 or 16 which are allowable for the reasons set forth above, and therefore claims 3/1-5/1,

6, 8, 10-12, 19 and 22 are allowable based on their dependence from claims 1 and 16. Reconsideration and allowance thereof are respectfully requested.

Claims 2, 3/2-5/2, 9, 18, 20 and 23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Peltomaki in view of Ellington, and further in view of Blakeley. This rejection is respectfully traversed. Blakeley shows a device for collecting stacked logs by moving L-shaped members B and C together to force spikes 30 to engage the ends of the logs. Once again, it is not clear to Applicants as to how the art of "log grabs" as shown by Blakeley is reasonably pertinent to the art of the art of computer controlled selection of a specific number of boxes from stacks for delivery in a warehouse, and comments made above with respect to Ellington are incorporated herein. Once again, Applicants fail to see, and the Office Action fails to establish, reasonable pertinence. Why would one working in the art of warehouses turn to the art of log grabs? Applicants respectfully submit that Blakely fails to address the deficiencies of Peltomaki and Blakely addressed above, by failing to show or suggest a collecting device being movable over the storage area and a portal robot for moving the collecting device over the storage area, an intermediate store on the movable collecting device arranged in a fixable location above the storage area of the objects to be picked up on the collecting device to accommodate objects to be picked up from the storage area for filling the intermediate store successively from various stacks in separate pick-up steps, whereas the intermediate store is arranged in a fixable location above the storage area as the objects are picked up. Reconsideration and withdrawal of this rejection are respectfully requested.

Conclusion

All objections and rejections raised in the Office Action having been properly traversed and addressed, it is respectfully submitted that the present application is in condition for allowance. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Notice of same is earnestly solicited.

Prompt and favorable consideration of this Amendment is respectfully requested.

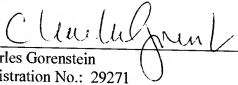
If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Paul T. Sewell, Registration No. 61,784, at (703) 205-8000, in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.14; particularly, extension of time fees.

Dated: May 17, 2010

Respectfully submitted,

By


Charles Gorenstein

Registration No.: 29271

BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road, Suite 100 East
P.O. Box 747
Falls Church, VA 22040-0747
703-205-8000